

THE EFFECTIVENESS OF LEGAL CONSIDERATIONS AND RECOMMENDATIONS OF ATTORNEY GENERAL'S TO SUPPORT THE NATIONAL DEVELOPMENT ACCELERATION PROGRAM AND PREVENTION OF CRIMINAL CORRUPTION IN INDONESIA

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ABSTRACT

In Indonesia, the acceleration on the implementation of the national strategic project (PPSN) was promoted by the government to expand economic growth. PPSN is established by increasing accessibility from the center to the region of economic growth. The PPSN covers toll road, road, infrastructure and railway infrastructure, airports, ports, housing, oil refineries, gas pipelines/LPG and other large projects. The legal basis of PPSN is Presidential Regulation Number 3 Year 2016. Problems that were occurring in the implementation of PPSN based on that regulation are repressive legal snare, if there is inappropriate of the authority even though include in administrative law which based on Law Number 30 of 2014 regarding Government Administration (Law 30/2014). These raise concerns to the officer who is in managing and implementing PPSN (affected by corruption). On the other hand, the repressive handling of corruption does not have a deterrent effect and cannot save the maximum state financial losses. This obstacle was overcome with the issuance of Presidential Instruction No. 1 of 2016, in which the government instructed the Attorney General to take preventive legal steps through administrative legal measures, under Law 30/2014, or to carry out legal considerations, including legal assistance and provide legal opinion by General Attorney (escort team), before repressing the inappropriate authority to secure development and governance. In this paper, the emphasis is on the study of the effectiveness of legal considerations and General Attorney recommendations on the smoothness of the national development acceleration program. The research method was used a normative juridical approach referring to legal norms contained in legislation, court rulings and legal norms that exist in society. The descriptive analytical research was applied the specifications (comparison) among them. From the study, it was found that the repressive law enforcement of corruption (in Indonesia called as Tipikor) had not yet provided maximum benefit for the state and society. By the effectiveness of the General Attorney which state under the Presidential Instruction I/2016, it can decrease corruption and the fear or anxiety of executing officials of the acceleration of national development. State losses as the impact of manipulation and corruption can also be minimized and at the same time will save state finances.

KEYWORDS: *General Attorney, Development, Legal Opinion, Corruption and Effectiveness*

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INTRODUCTION

Efforts to eradicate corruption by the Attorney General's Office and the Police are considered not optimal and have not been implemented in accordance with the expectations and desires of the public. To meet the expectations of the people, the government formed the Anti-Corruption Commission (hereinafter referred to as the KPK) based on Law Number 30 of 2002 on the Corruption Eradication Commission. In this regard consider letter b of Law No. 30 of 2002 on the Corruption Eradication Commission, which was last amended by Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission (hereinafter referred to as the Law -The KPK Act) states that the government agencies, in this case, the Attorney General's Office and the Police, do not function effectively and efficiently in eradicating corruption crimes because the performance of the Attorney General and the Police has not been maximized in resolving corruption cases.

The acceleration of the implementation of the national strategic project (PPSN) was promoted by the government, which aims to improve the national economy. PPSN was established by increasing accessibility from the center of economic growth to its rear region (hinterland).¹ The legal basis of this PPSN is Presidential Regulation (called *Perpres*) Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects (*Perpres* 3/2016). The PPSN covers toll road, infrastructure, railroad, airport, port, housing, oil refinery, gas/LPG pipeline infrastructure projects and other large projects.

The problem in implementing this PPSN is the fear/anxiety of implementing officials in carrying out PPSN activities related to legal sanctions for any errors or inappropriate authority that occurs. Inappropriate of the authority (corruption) will be entangled by the law in a repressive manner even though the inappropriate of authority is included in administrative law under Law Number 30 year 2014, concerning Government Administration (Law 30/2014). The fear or concern of the executing official is reasonable because the implementation of government service procurement is the most places for corruption case. Data for 2017 shows that there were 576 corruption cases handled by General Attorney officers, and found the state losses of Rp. 6.5 trillion and bribes of Rp. 211 billion.² The highest case of corruption shows that repressive handling of corruption does not have a deterrent effect, and cannot save the maximum state financial losses. To overcome this problem and keep the PPSN running, a Presidential Instruction No. 1, year 2016 (*Inpres* 1/2016) was issued, and which concerning the Acceleration of the Implementation of the National Strategic Project.

This paper is focus on the effectiveness of legal considerations and General Attorneys recommendations to support the acceleration of the implementation of national strategies in order to prevent the corruption. The research method was used the normative juridical approach. The study refers to the legal norms contained in the legislation, court decisions and legal norms that exist in society.³ The normative juridical approach was done by examining library materials as secondary data. The research specifications used a descriptive analytical. Sources of legal material used are primary and secondary data.⁴ The data collection techniques were carried out by means of literature study and interviews.

¹ Sekretaris Kabinet, *Inilan Inpres No 1 Tahun 2016 Tentang Percepatan Preyek Stegis Nasional*, <http://setkab.go.id>, diunduh pada 27-7-2016,10.00.

² Sektor Korupsi Sektor Pengadaan tahun 2017, diakses dari <https://www.antikorupsi.org/id/kajian/tren-korupsi-pbj-2017>, tanggal 20 Februari 2019.

³ Soerjono soekanto dan Sri Mamudji, *Penelitian Hukum Normatif suatu tinjauan singkat*, Raja Grafindo Persada, Jakarta, 1994, hlm. 13.

⁴ *Ibid*, page 10, 17-18.

METHOD

This study uses a normative juridical approach, the study of which refers to the legal norms contained in legislation, court rulings and legal norms that exist in society.⁵ The method of normative juridical approach is a research that deductively starts from the analysis of the articles in the legislation governing the object of concern. In the normative juridical approach is done by examining library materials or secondary data.⁶ This legal research is also called library law research.⁷

The research specification used is analytical descriptive which is a study that aims to compare and analyze the facts that exist systematically, factually, and accurately with positive legal theories concerning the problem under study.⁸

The source of legal material used is primary and secondary data and data collection techniques are carried out by means of literature study and interviews. Meanwhile the data analysis technique in this writing uses qualitative analysis.

The stages of research in this paper include:

- Library research, which is literature study or secondary data.⁹
- Field study is by studying and analyzing primary data through interviews to hear the opinions and thoughts of the Prosecutor's Office. The instrument used in this interview was in the form of interview guidelines.
- Data collection

Research data that has been obtained are grouped into the following:

Documentation review is a systematic document search technique of secondary data in the form of primary, secondary and tertiary legal materials. In this study using secondary data consisting of:

- Primary of legal documents, namely several laws and regulations such as the Corruption Act (Corruption Act), Law 30/2014, and Presidential Instruction 1/2016.
- Secondary of Legal documents, namely secondary data from legal materials relating to the problem being investigated.
- Tertiary of Legal documents complements primary and secondary legal materials including Indonesian encyclopedias, Legal Dictionaries, English-Indonesian Dictionaries and various legal magazines and journals.
- Field Research is the activity of collecting, researching, and reflecting primary data obtained directly from the field to support secondary data.

Primary and secondary data collection is done through library research in order to obtain legislation, documents, books or literature that are closely related to corruption, the appropriation of assets and protection of human rights, and the results of several studies. For jurisprudence, judges' decisions, journals, magazine papers become tertiary legal material.¹⁰

⁵ *Ibid*, page. 13.

⁶ Bix, B. (2003) *Jurisprudence: Theory and Context* (3rd Edition), Sweet & Maxwell, London.

⁷ T.R. Tyler, 'Methodology in Legal Research', (2017) 13 *Utrecht Law Review*, no. 3, , pp. 130-141

⁸ B. van Klink & S. Taekema (eds.), *Law and Method: Interdisciplinary Research into Law* (2011)

⁹ Soerjono Soekanto, *Penelitian Hukum Normatif Suatu Pengantar*, Rajawali Press, Jakarta, 2001, hlm. 14.

¹⁰ *Ibid.*, hlm 13.

RESULT AND DISCUSSIONS

Prevention of Criminal Action of Corruption by the Attorney General

The Attorney General's Office of the Republic of Indonesia is one of the law enforcement agencies besides the Corruption Eradication Commission and the Police who carry out law enforcement against perpetrators of corruption. The Prosecutor's Office performs its duties professionally and responsibly in accordance with the mandate of Law 16/2004 Article 2 paragraph (1). Based on Presidential Instruction I / 2016 the Attorney General has the authority to carry out legal assistance in order to accelerate the implementation of national development (PPSN).

The Presidential Instruction No. I/2016 was issued as of the fear / anxiety of implementing officials who in carrying out the PPSN program were exposed to corruption (Corruption) and subject to repressive legal action. From the results of repressive law enforcement in corruption, it has not been proven to provide a deterrent effect. This can be seen from the corruption that has been increasing from year to year. Worldwide Governance Indicators (WGI) data show indicators of "Government Effectiveness" of Indonesia since the KPK was established (2003) below 50%. In 2016, there were 482 cases of corruption and 576 cases of corruption in 2017, there were 1298 corruption cases and 6.5 trillion of state losses with 211 billion in bribes. This data was shown that an increase in cases of criminal acts of corruption that occur and also raises fears/worries for implementing officials accelerating national development. In 2018, the number of corruption cases has decreased to 454 cases, but still in a relatively high number.

The handling of corruption cases is carried out by referring to the Presidential Instruction I/2016 which gives instructions in the form of strategic steps to support the acceleration of the national development (PPSN) program, namely:

- Prioritize the government administration process according to the provisions of Law 30/2014 before conducting an investigation of public reports concerning the abuse of authority in the implementation of the National Strategic Project (PPSN).
- Forwarding / submitting community reports received by the Attorney General's Office of the Republic of Indonesia or the National Police of the Republic of Indonesia regarding the abuse of authority in the implementation of the National Strategic Project (PPSN) to the leadership of the Ministry / agency or local government for examination and follow-up to the completion of community reports, including in the event that an inspection is required by the Government Internal Supervisory Apparatus.
- Conduct an audit of the results of an audit of the Government Internal Supervisory Apparatus regarding non-administrative criminal findings submitted by the leadership of the Ministry / agency or Regional Government in accordance with statutory provisions.
- Examining the audit results of the Government Internal Supervisory apparatus based on the principles of Good General Governance; reasons that are objective and do not cause a conflict of interest and are carried out in good faith.
- Does not publicize the examination widely to the public before the investigation stage.
- Use the opinions and / or explanations / expert statements of the authorized ministries / institutions as official interpretations of the relevant laws and regulations.

- Arranging internal regulations regarding the procedures and standards of Operational Procedures (SOP) for handling public reports relating to the abuse of authority in the implementation of the National Strategic Project as the basis for carrying out tasks in each of the line units of vertical agency.
- Providing assistance / legal considerations needed in accelerating the implementation of the National Strategic Project (PPSN).
- Carry out guidance and supervision of the ranks below and provide action if there are irregularities and violations.

Implementation of National Strategic Project Development Assistance and Security by the Prosecutor's Office of the Republic of Indonesia

To improve the welfare of the people, the government seeks to accelerate the National Strategic Project. The rapid development in all sectors, both quantitatively and qualitatively, opens the door to legal problems, legal disputes and legal cases, among others in the Civil and State Administration (Datun).

To avoid the possibility of this malpractice, President Joko Widodo issued Presidential Instruction 1/2016. In the Presidential Instruction, the President instructed the Attorney General of the Republic of Indonesia to provide the legal assistance / consideration necessary to expedite the implementation of the National Strategic Project. Attorney General H.M. Prasetyo said that the Datun Division of the Prosecutor's Office should be able to take this momentum by considering that the duties and functions of the Datun Sector play an important role in taking preventive action against possible irregularities in the implementation of the National Strategic Project.¹¹

Deputy Attorney-General for Civil and State Administration (Jamdatun) Bambang Setyo Wahyudi said that irregularities in the law can be reduced by taking full advantage of the Attorney General's Office (JPN). JPN can provide legal considerations in the form of providing legal opinions, legal assistance, and legal audits.¹²

The implementation and implementation of assistance, the supervision of this project of the National Strategic Project is an attempt to prevent early warning (early warning) of the deviation of authority that occurs in policymaking. In addition, this is one of the efforts to equalize the perception and also to harmonize the views between law enforcement officers and local government implementers on the importance of development in the region.

Legal assistance and opinion provided by the Public Prosecutor's Office in accordance with Presidential Directive 1/2016, one of which ordered the Indonesian Attorney General to provide legal assistance / consideration needed to expedite the implementation of National Strategic Project projects. Establishment of Directorate D, through Decree of the Attorney General of the Republic of Indonesia Number 345 of 2019 on Amendments to KEPJA NO: Kep-152 / A / JA / 10/2015 from Inpres 1/2016 to the Attorney General of the Republic of Indonesia to provide necessary assistance or legal considerations in expediting the implementation of the National Project and Presidential Decision 3/2016 and Presidential Speech on Bhakti Adhyaksa Day (HBA) in 2015, thus making changes in legal politics that place more emphasis on the preventive approach compared to repressive actions in Law Enforcement implementation. This matter was explained by the Deputy Attorney General for Datun (Jamdatun), DR. (HC) Bambang Setyo Wahyudi was accompanied by the Head of Technical and Functional Training Organizing Center, Asnawi, while delivering a talk to TP4 batch II participants in the

¹¹ Asep Mulyana, *Kebijakan Pejabat Publik dalam Persepektif Hukum Administrasi Negara dan Tindak Pidana korupsi*, disampaikan pada rapat koordinasi dan evaluasi pelaksanaan TP4D dengan Kepala Kejaksaan Negeri dan Bupati/Walikota Se-Sumatera Utara, Medan 9 Agustus 2016

¹² *Ibid*

Classroom of Satya building (former R&D) of the Indonesian Prosecutor's Office of Education and Training, Jakarta.

The duties and functions of Directorate D are to monitor and secure and support the success of government and development through prevention / prevention efforts at the central and regional levels in accordance with their respective jurisdictions, conduct security activities on strategy development from beginning to end, coordinate with internal supervisors the government to prevent potential irregularities to deter, thwart and cause losses to national finances, monitor and evaluate the implementation of oppressive work and development programs and law enforcement when adequate preliminary evidence is found after the coordination of internal controls.

In addition to the cases mentioned above, namely the civil lawsuit case against the Chairman of the Jakarta Congress PPP version, Djan Faridz., Then the lawsuit case against Yayasan Supersemar, Jamdatun has also provided assistance to PT. Indonesia Infrastructure Guarantee (Persero) (hereinafter referred to as PT. PII). The Office of the Attorney General of the Republic of Indonesia signed a memorandum of understanding (MoU) to ensure that guaranteed infrastructure projects do not stop due to legal issues. The signing took place in South Jakarta, Tuesday, by the President Director of PT. PII Shintya Roesly and Jamdatun from AGO Bambang Setyo Wahyudi. Managing Director of PT. PII Shintya Roesly said the MoU was the implementation of Inpres 1/2016. The Presidential directive directs all state apparatus to participate in implementing and supporting the speedy implementation of the National Strategic Project in accordance with their duties and authorities, among others, through legal assistance / consideration. "This MoU is proof that accelerating infrastructure development requires synergy with other state institutions such as Jamdatun which has the power to provide legal assistance."¹³

Projects that receive a guarantee from PT. PII is protected if there are legal issues that could potentially hinder the project. It is hoped that with this cooperation, in the future the private sector will be more determined to invest in the public sector. The AGO welcomes the initiative made by PT. PII and said that the AGO will work together in providing legal assistance and legal considerations, especially in accelerating the provision of infrastructure projects in Indonesia. This is because the task of the Indonesian Prosecutor's Office, especially Jamdatun, is to take a preventive role in preventing losses to the central / regional government as stated in Law 16/2004.

PT. Since its establishment in 2009, PII has signed Guarantee Agreements for eight infrastructure projects through the Public Private Partnership Scheme (PPP) with a total investment of IDR 75 trillion. PT. PII under the auspices of the Ministry of Finance has the mandate as the sole implementer of government guarantee providers according to Presidential Decree 38/2015.

Apart from the MOU with PT. PII, the Attorney General's Office of the Republic of Indonesia supports the government's efforts in providing safe and comfortable mass transportation facilities for the community. This support was realized through the signing of a memorandum of understanding (MoU) between the AGO and PT. Kereta Api Indonesia (PT. KAI), in Bandung. The MoU was signed by the Head of the West Java High Prosecutor's Office, Setia Untung Arimuladi with the President Director of PT KAI, Edi Sukmoro and witnessed by Jamdatun, Bambang Setyo Wahyudi.¹⁴

Legal assistance and Safeguarding of National Strategic Project Development can help better manage transportation modes. Good management will lead to service efficiency for the community, good transportation

¹³ Kejaksaan RI, Laporan Kegiatan JAM DATUN Periode Januari s/d Desember Tahun 2016 Subdit Yankum Direktorat Pemulihan dan Perlindungan Hak

¹⁴ *Ibid*

development can improve connectivity between regions. If one region is well connected to another, it is hoped that employment opportunities will be wider and the movement of the economy will increase. Thus, inequality and inequality can be gradually overcome. Through the MoU, PT. KAI can use the services of the JPN Division of the Prosecutor's Office to provide legal considerations in the form of opinions.

Apart from legal assistance, the Attorney General's Office or JPN can provide a legal opinion. The legal considerations provided by the JPN are always objective, and are carried out based on normative juridical principles. In addition, JPN also has the authority to provide legal assistance in both litigation and non-litigation, as well as other legal actions, namely becoming a facilitator, mediator, or consolidator, in the event of a dispute between state institutions, government agencies at the central / regional level, BUMN / BUMD in the field of Datun.

The legal considerations provided by the Public Prosecutor's Office are in line with Presidential Instruction 1/2016, one of which instructs the Indonesian Attorney General to provide legal assistance / considerations needed to accelerate the implementation of National Strategic Projects. In this case, the Public Prosecutor's Office plays a role in taking preventive actions against potential legal irregularities in the implementation of National Strategic Project projects, especially those concerning Civil law and State Administration. One of the National Strategic Projects mandated to PT. KAI is the construction of a railway facility for the Jakarta-Bogor-Depok-Bekasi LRT project.

The legal considerations provided by the Public Prosecutor's Office are also part of the "Indonesia Prevent" program, which is a form of legal approach that prioritizes preventive measures rather than prosecution. Penal law enforcement through penal means is actually used as the ultimate remedium. "Action is indeed important, but it would be better if we could prevent corruption and other crimes. Prevention makes more state money saved.

The repressive law enforcement efforts that have been carried out by the Attorney General's Office, the Police and the Corruption Eradication Commission can only have a deterrent effect on the perpetrators themselves but have not been able to create a deterrent effect for potential perpetrators of other corruption crimes, this is shown by an increase in the quantity and quality of acts. Criminal corruption that occurs in Indonesia, which ultimately only pursues the goal of law formation, namely justice and legal certainty, but forgets the principle of benefit from the law itself, namely to achieve the welfare of the community. In contrast to Preventive efforts that prioritize the return of state funds, where State Attorneys and Directorate D provide security and assistance by providing legal considerations / opinions to officials and corporations (BUMN / BUMD) before making decisions on National Strategic Projects. So that it can avoid the potential for illegal acts, especially corruption, by means of proper and proportional mechanisms and authorization.

Preventive and persuasive efforts that prioritize the return of state finances do not mean eliminating criminal sanctions that have been specifically regulated in the Corruption Crime Law. However, with the Presidential Decree 3/2016, which was followed up by Inpres 1/2016, it was a follow-up to Inpres 7/2015.

Law Enforcement Officials appointed by Inpres 1/2016 must coordinate with each other in order to realize the success of the National Strategic Project.

By Law No. 5 of 1991 in conjunction with Article 30 paragraph (2) of Law 16/2004, the Attorney General's Office in the field of Civil and State Administration (Datun) with special powers can act in and out of court for and on behalf of the state or government. The main duties and functions of the Republic of Indonesia Attorney's Datun Sector include law enforcement, legal aid, legal considerations and other legal actions.

The escort and security carried out by the Prosecutor's Office on the implementation of the National Strategic Project (PPSN) in the form of assistance and legal considerations by the State Attorney in order to minimize the occurrence of irregularities and errors in the implementation of the National Strategic Project as well as efforts to prevent corruption and respond to negative stigma regarding law enforcement carried out based on safekeeping or the interests of other parties (preventing the occurrence of criminalization efforts).

Legal assistance provided by the State Attorney (JPN) is an effort to recover and save the State's money. The rescue of state finances has been carried out by the Attorney General's Office through the Deputy Attorney General for Civil and Administrative Affairs (Jamdatun) in the civil suit of one of the party's Chairmen in Indonesia. In its interim ruling, the Panel of Judges of the Central Jakarta District Court granted an exception regarding the absolute competence submitted by JPN. The Panel of Judges also believes that the Central Jakarta District Court is not authorized to adjudicate the lawsuit. The panel of judges considered the court authorized to adjudicate was the State Administrative Court.¹⁵

Law enforcement is an attempt to bring the ideas of justice, legal certainty and social benefits into reality. Providing justice in a case means deciding the law in concreto to maintain and guarantee procedural compliance with material law determined by formal law. According to Joseph Goldstein in Criminal Law, full enforcement is considered not a realistic expectation because of the limitations in the form of time, personnel, investigative tools, funds and so on.¹⁶ All this results in discretion and the rest is called actual enforcement. According to actual enforcement, law enforcement in certain circumstances such as in conditions of limitations in the form of time, personnel, investigation tools, funds and so on can be done discretion that is to provide space for officials or state administrative bodies to take action without having to be bound fully on the law, or actions taken by prioritizing the achievement of goals (*doelmatigheid*) in accordance with applicable law (*rechtmatigheid*).¹⁷

Enforcement of discretionary law is carried out by prioritizing the achievement of objectives, even though it is incompatible or contrary to the enforcement of applicable law. The objective in law enforcement on corruption is to achieve the return of state financial losses and the benefit of projects that are subject to corruption. The Law of Benefit law proposed by Jeremy Bentham states that law can be recognized as law if it can provide great benefits to as many people as possible.¹⁸ Based on the theory of expediency associated with the concept of actual enforcement, the repressive law enforcement of corruption (Tipikor) has not yet provided maximum benefit for the country or the community. Repressive law enforcement without considering the limitations in law enforcement, only becomes an obstacle in the implementation of national strategic development

In this case, the limitations in law enforcement of corruption (Corruption) develop and are institutionalized through Law 30/2014 and Presidential Instruction 1/2016. According to this Presidential Instruction 1/2016, law enforcers including the Prosecutor's Office must prioritize the government administration process in resolving cases of abuse of authority in the implementation of the national strategic project development, before submitting it to be resolved repressively through criminal law enforcement in accordance with the Corruption Act (Corruption).

¹⁵ Bambang Setyo Wahyudi, *Indonesia Mencegah "Upaya Pencegahan Korupsi Oleh Kejaksaan Bidang Perdata dan TUN, Op.Cit.*, hlm 188.

¹⁶ P. van den Hoven, 'Analysing Discursive Practices in Legal Research: How a Single Remark Implies a Paradigm', (2017) 13 Utrecht Law Review, no. 3, , pp. 56-64

¹⁷ F.L. Leeuw & H. Schmeets, *Empirical Legal Research. A guidance book for lawyers, legislators and regulators* (2016)

¹⁸ Teguh Prasetyo & Abdul Halim Barkatullah, *Filsafat, Teori, & Ilmu Hukum*, Jakarta, *PT. Raja Grafindo Persada*, 2012, hlm 367.

Inpres 1/2016 was issued to carry out higher laws and regulations, namely Law Number 30 of 2014 concerning Government Administration (Law 30/2014). In Law, 30/2014 it is regulated that 'in principle' abuse of authority is prohibited. The presence or absence of abuse of authority must previously be determined through supervision by the Government Internal Apparatus (APIP) (Article 20 paragraph (1) of Law 30/2014). Where the abuse of authority is an administrative error that causes state losses (Article 20 paragraph (2) letter c). In this case, the governing body / official may submit an application to the state administrative court to examine and decide whether or not there is an element of authority abuse (Article 21 paragraph (1) and (2) of Law 30/2014).

This shows that Law 30/2014 is very basic and expands Government administration. Where the scope includes executive, judiciary and legislative (Article 4 of Law 30/2014). Like the death of the investigator's capacity in assessing an action, including in the realm of abuse of authority because it has been transferred to the State Administrative Court to be tested first. This is in line with the promulgation of Law 30/2014, which also provoked a discussion about the failure of investigator's capacity to judge an act including in the realm of abuse of authority because it has been transferred to the State Administrative Court for trial. The provisions of Article 21 paragraph (1) of Law 30/2014, namely "The court is authorized to receive, examine, and decide whether or not there is an element of abuse of Authority carried out by Government Officials".

Whereas the meaning of the Court in the above paragraph is explained in the provisions of Article 1 number 18 of Law 30/2014, namely the State Administrative Court. The phrase abuse of authority / abuse of authority can be found in the formulation of Article 3 of the Act on Corruption, which has the complete sound:

"Anyone who aims to benefit himself or someone else or a corporation, misuse the authority, opportunity or means available to him because of his position or position that can harm the country's finances or the country's economy."

Thus, the element of "abuse of authority" in Article 3 of the Corruption Act (Corruption) has the same meaning as the "abuse of authority" in Article 21 paragraph (1) of Law 30/2014. Provisions in Article 21 paragraph (1) of Law 30/2014 are deemed to have revoked the authority of the investigator in conducting an investigation in order to find out the abuse of authority carried out by a suspect as a government official which according to this matter should be the object to be tested first in the Administrative Court State Enterprises.

According to Law 30/2014, if there is an abuse of authority accompanied by state losses, then the state losses must be returned, no later than 10 (ten) working days, as of the decision of the results of supervision (Article 20 paragraph (4) of Law 30/2014).

Inpres 1/2016 with the Corruption Act (Tipikor) can be said to be not in conflict as long as Inpres 1/2016 is implemented within the framework of Law 30/2014. In addition, the principle of the laws and regulations governing that the new law overrides the old law (*LEX POST TERIORI DEROGAT LEGI PRIORI*) and the principle of the law that specifically overrides the old law (*LEX SPECIALIST DEROGAT LEGI GENERALI*), in this case regulates the abuse of government administrative authority. Then the principle in criminal law, if there are two laws governing the same thing, then the more favorable law is used.

However, the existence of these legal principles does not mean that they apply absolutely. Because administrative sanctions as referred to in Law 30/2014 there are certain restrictions so as to avoid making Law 30/2014 as a shield by government officials who have clearly violated the Corruption Act (Corruption).

In principle, the abuse of authority resulting in state losses is categorized as a criminal offense as regulated in Article 62 paragraph (2) of Law Number 1 of 2004 concerning State Treasury (Law 1/2004). If in the investigation found a criminal element, the Supreme Audit Board follows up in accordance with statutory regulations. Where the provisions apply that the unlawful nature in a criminal act of corruption (Corruption) is the loss of the state, not on the return of state losses. Even though there is an APIP or PTUN decision based on Law 30/2014, the decision must still be respected as a legal ruling, which can actually be used as evidence of abuse of authority in the criminal act of corruption (Corruption).

The issuance of Law 30/2014 is motivated to prevent corruption (Corruption) by prioritizing the return of state financial losses that are prioritized. Therefore, if the state financial losses have been returned, then no repressive efforts will be required. This provision is contrary to the Corruption Act (Corruption) and Law 1/2004. For this reason, this can be done by considering the theory of expediency with certain restrictions. With the provision of Article 62 of Law 30/2014, officials who have misused their authority and resulted in state losses, will voluntarily try to recover the state losses within the specified time. If it cannot be returned, then repressive measures can be applied, and the provisions of preventive measures only apply to the abuse of authority for the first time. Furthermore, if in the future the relevant official commits his actions, administrative legal remedies will no longer apply.

In the context of preventing and resolving the abuse of authority based on Law 30/2014 and Presidential Instruction 1/2016, the Prosecutor's Office has made efforts, such as through legal considerations and TP4 recommendations that prioritize the prevention of abuse of authority which causes state losses through legal considerations, including legal assistance and giving opinions law, from project planning to completion.

It can be concluded that the stages in the settlement of cases of abuse of authority that cause state financial losses are preventive law enforcement approach first, use of corridor Law 30/2014, the principle of expediency, use of legal instruments to repay state financial losses and law enforcement. This is more beneficial in addition to the state as well as to the maximum extent of society. Because with the loss of state finances that have been returned, the state through the government can use the source of these funds to continue development that can ultimately be felt by the community.

However, efforts to prevent incentives from abuse of authority that cause state losses are not carried out without limitations. These limits need to be considered, and are expected to be included in legislation that will provide legitimate legal considerations and TP4 recommendations in a preventative effort to prevent corruption (Corruption) and rescue of state financial losses. The regulation regulates legal considerations and recommendations that are binding on stakeholders, including other law enforcers; Repressive law enforcement can only be done after the National Strategy project is completed; Repressive efforts through administrative sanctions are limited to the first act of corruption (Corruption), and if the act of corruption (Corruption) is carried out again, then repressive measures will be applied. That if the preventive efforts are carried out, then the purpose of punishment as an *Ultimum Remedium* can be achieved.

CONCLUSIONS

Based on the explanation above, the Prosecutors' Office through legal considerations and TP4 recommendations has effectively dealt with state financial losses. The results of the study on the effectiveness of the legal considerations and recommendations of general attorney to support the acceleration of national development programs and prevent corruption, the conclusions can be drawn, namely:

- Repressive handling of corruption does not provide a deterrent effect and cannot save the maximum state financial losses.
- Legal considerations and recommendations of General Attorneys could be effective in recovering State financial losses as one of legal considerations. And Recommendations which prioritize Preventive action by the Prosecutor's Office through the authority in the field of Civil and State Administration can minimize the occurrence of irregularities and errors in the implementation of the National Strategic Project, which can be used as an effort to prevent corruption.

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